

HOUSE BILL 794

K3, P4, J1
HB 1496/18 – HGO

9lr0807

By: **Delegate Glenn**

Introduced and read first time: February 8, 2019

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Discrimination Against Medical Cannabis Patients**
3 **and Caregivers – Prohibition**
4 **(Medical Cannabis Patient and Caregiver Antidiscrimination Act)**

5 FOR the purpose of prohibiting, except under certain circumstances, a certain employer
6 from taking certain discriminatory actions against or otherwise penalizing a certain
7 qualifying patient or certain caregiver based on the individual's status as a
8 qualifying patient or caregiver or, with respect to a certain qualifying patient, a
9 certain drug test result; authorizing certain individuals to file a complaint with the
10 Commissioner of Labor and Industry; requiring the Commissioner to investigate a
11 certain matter promptly under certain circumstances; requiring the Commissioner
12 to try to resolve a certain matter informally; authorizing the Commissioner to assess
13 certain civil penalties and send a certain order to pay a certain penalty to certain
14 parties under certain circumstances; authorizing an employer to request a certain
15 hearing under certain circumstances; requiring the Commissioner to schedule a
16 certain hearing under certain circumstances; establishing that an order to pay a civil
17 penalty becomes final under certain circumstances; authorizing the Commissioner
18 or a complainant to bring certain court actions under certain circumstances; defining
19 certain terms; and generally relating to discriminatory actions against qualifying
20 patients and caregivers by employers.

21 BY repealing and reenacting, without amendments,
22 Article – Health – General
23 Section 13–3301(a), (b), (m), and (n)
24 Annotated Code of Maryland
25 (2015 Replacement Volume and 2018 Supplement)

26 BY adding to
27 Article – Labor and Employment
28 Section 3–716
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2016 Replacement Volume and 2018 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Health – General

13–3301.

(a) In this subtitle the following words have the meanings indicated.

(b) “Caregiver” means:

(1) A person who has agreed to assist with a qualifying patient’s medical use of cannabis; and

(2) For a qualifying patient under the age of 18 years, a parent or legal guardian.

(m) “Qualifying patient” means an individual who:

(1) Has been provided with a written certification by a certifying provider in accordance with a bona fide provider–patient relationship; and

(2) If under the age of 18 years, has a caregiver.

(n) “Written certification” means a certification that:

(1) Is issued by a certifying provider to a qualifying patient with whom the provider has a bona fide provider–patient relationship; and

(2) Includes a written statement certifying that, in the provider’s professional opinion, after having completed an assessment of the patient’s medical history and current medical condition, the patient has a condition:

(i) That meets the inclusion criteria and does not meet the exclusion criteria of the certifying provider’s application; and

(ii) For which the potential benefits of the medical use of cannabis would likely outweigh the health risks for the patient; and

(3) May include a written statement certifying that, in the provider’s professional opinion, a 30–day supply of medical cannabis would be inadequate to meet the medical needs of the qualifying patient.

Article – Labor and Employment

1 **3-716.**

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (2) "CAREGIVER" MEANS AN INDIVIDUAL WHO:

5 (I) HAS AGREED TO ASSIST WITH A QUALIFYING PATIENT'S
6 MEDICAL USE OF CANNABIS; AND

7 (II) HAS BEEN ISSUED AN IDENTIFICATION CARD BY THE
8 NATALIE M. LAPRADE MEDICAL CANNABIS COMMISSION IN ACCORDANCE WITH §
9 13-3304 OF THE HEALTH - GENERAL ARTICLE.

10 (3) (I) "EMPLOYER" MEANS:

11 1. A PERSON ENGAGED IN A BUSINESS, AN INDUSTRY, A
12 PROFESSION, A TRADE, OR ANY OTHER ENTERPRISE IN THE STATE; OR

13 2. A UNIT OF STATE OR LOCAL GOVERNMENT.

14 (II) "EMPLOYER" INCLUDES AN AGENT, A REPRESENTATIVE,
15 AND A DESIGNEE OF THE EMPLOYER.

16 (4) "QUALIFYING PATIENT" HAS THE MEANING STATED IN § 13-3301
17 OF THE HEALTH - GENERAL ARTICLE.

18 (B) THIS SECTION DOES NOT APPLY TO AN EMPLOYER IF COMPLYING WITH
19 THIS SECTION WOULD CAUSE THE EMPLOYER TO LOSE A MONETARY OR
20 LICENSING-RELATED BENEFIT UNDER FEDERAL OR STATE LAW.

21 (C) AN EMPLOYER MAY NOT DISCRIMINATE AGAINST A QUALIFYING
22 PATIENT OR CAREGIVER IN HIRING, TERMINATION, OR IMPOSITION OF A TERM OR
23 CONDITION OF EMPLOYMENT OR OTHERWISE PENALIZE A QUALIFYING PATIENT OR
24 CAREGIVER BASED ON:

25 (1) THE INDIVIDUAL'S STATUS AS A QUALIFYING PATIENT OR
26 CAREGIVER; OR

27 (2) A REGISTERED QUALIFYING PATIENT'S POSITIVE DRUG TEST FOR
28 CANNABIS COMPONENTS OR METABOLITES UNLESS THE QUALIFYING PATIENT
29 USED, POSSESSED, OR WAS IMPAIRED BY CANNABIS ON THE PREMISES OF THE
30 PLACE OF EMPLOYMENT OR DURING THE HOURS OF EMPLOYMENT.

1 **(D) (1) IF AN EMPLOYER VIOLATES SUBSECTION (C) OF THIS SECTION,**
2 **THE QUALIFYING PATIENT OR CAREGIVER MAY FILE A WRITTEN COMPLAINT WITH**
3 **THE COMMISSIONER.**

4 **(2) IF THE COMMISSIONER RECEIVES A WRITTEN COMPLAINT UNDER**
5 **PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER SHALL INVESTIGATE**
6 **THE MATTER PROMPTLY.**

7 **(3) IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER HAS**
8 **VIOLATED SUBSECTION (C) OF THIS SECTION, THE COMMISSIONER SHALL TRY TO**
9 **RESOLVE THE MATTER INFORMALLY.**

10 **(4) IF THE COMMISSIONER IS UNABLE TO RESOLVE THE MATTER**
11 **INFORMALLY, THE COMMISSIONER MAY:**

12 **(I) ASSESS A CIVIL PENALTY OF:**

13 **1. UP TO \$500 FOR AN INITIAL VIOLATION OF**
14 **SUBSECTION (C) OF THIS SECTION; OR**

15 **2. UP TO \$2,500 FOR A SUBSEQUENT VIOLATION OF**
16 **SUBSECTION (C) OF THIS SECTION; AND**

17 **(II) SEND AN ORDER TO PAY THE CIVIL PENALTY TO THE**
18 **COMPLAINANT AND THE EMPLOYER.**

19 **(5) (I) WITHIN 30 DAYS AFTER AN EMPLOYER RECEIVES AN ORDER**
20 **TO PAY A CIVIL PENALTY UNDER PARAGRAPH (4) OF THIS SUBSECTION, THE**
21 **EMPLOYER MAY REQUEST A DE NOVO ADMINISTRATIVE HEARING, SUBJECT TO THE**
22 **REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.**

23 **(II) ON RECEIPT OF A REQUEST FOR A HEARING UNDER**
24 **SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COMMISSIONER SHALL SCHEDULE A**
25 **HEARING.**

26 **(III) IF A HEARING IS NOT REQUESTED UNDER SUBPARAGRAPH**
27 **(I) OF THIS PARAGRAPH, THE ORDER TO PAY A CIVIL PENALTY BECOMES A FINAL**
28 **ORDER OF THE COMMISSIONER.**

29 **(6) IF AN EMPLOYER FAILS TO COMPLY WITH A FINAL ORDER TO PAY**
30 **A CIVIL PENALTY, THE COMMISSIONER OR THE COMPLAINANT MAY BRING AN**
31 **ACTION TO ENFORCE THE ORDER TO PAY A CIVIL PENALTY IN THE CIRCUIT COURT**

1 IN THE COUNTY WHERE THE EMPLOYER OR THE COMPLAINANT IS LOCATED.

2 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
3 October 1, 2019.